

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEROY J. FLEMING,

Plaintiff,

v.

CITY OF DETROIT, et al.,

Defendants.

CIVIL ACTION NO. 04 CV 74081 DT

DISTRICT JUDGE NANCY G. EDMUNDS

MAGISTRATE JUDGE VIRGINIA M. MORGAN

REPORT AND RECOMMENDATION

Plaintiff filed a *pro se* 42 U.S.C. § 1983 action against the City of Detroit, former Detroit Police Chief Jerry Oliver, and “Officer Loosevelt,” and was granted *in forma pauperis* status. The U.S. Marshal mailed waiver of service forms to the defendants. The City of Detroit and defendant Oliver executed the forms and answered the complaint. The waiver form sent to defendant Loosevelt was returned unexecuted, together with a letter written by counsel for the City indicating that defendant Loosevelt left the Detroit Police Department in 2003 to join the Grosse Pointe Park Police Department. Further, counsel expressed his belief that defendant Loosevelt was in active service in the military and had been deployed to Iraq. For the reasons discussed in this Report, it is recommended that the claims against Loosevelt be dismissed.

On June 23, 2005, this court issued an order directing plaintiff to provide the court with defendant Loosevelt’s address so that U.S. Marshal could once again attempt to effect service

upon him. Plaintiff filed a response to the court's order in which he acknowledged receipt of counsel's letter and stated the following: "Plaintiff Fleming urge [sic] this court to treat this suit as a suit against the 'real party in interest,' i.e., the City of Detroit and its Police Chief Jerry Oliver...."

Plaintiff's response to the court's order appears to be a request pursuant to Fed. R. Civ. P. 41(a)(2) for voluntary dismissal of all claims against defendant Loosevelt, and the court will construe it as such. There being no reason to deny such a request, the court recommends that all claims against defendant Loosevelt be dismissed pursuant to Rule 41(a)(2).

Further, it does not appear that plaintiff has made any effort to verify defendant Loosevelt's present employment or address or whether he is, in fact, currently stationed in Iraq. It is plaintiff's responsibility to locate the defendant and provide sufficient information to permit the Marshal to effect service upon him, or to request appropriate relief if such information cannot readily be obtained. Plaintiff has done neither in this case, despite having been provided with information regarding defendant Loosevelt's whereabouts and having been given ample time to provide the court with the necessary information or seek appropriate relief. Accordingly, the court recommends, in the alternative, that the claims against defendant Loosevelt be dismissed for failure to prosecute pursuant to Fed. R. Civ. P. 41(b).

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. Thomas v. Arn, 474 U.S. 140

(1985); Howard v. Secretary of HHS, 932 F.2d 505, 508 (6th Cir. 1991); United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). The filing of objections which raise some issues, but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. Willis v. Secretary of HHS, 931 F.2d 390, 401 (6th Cir. 1991); Smith v. Detroit Fed'n of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this magistrate judge.

s/Virginia M. Morgan

VIRGINIA M. MORGAN

UNITED STATES MAGISTRATE JUDGE

Dated: September 22, 2005

Proof of Service

The undersigned certifies that a copy of the foregoing report and recommendation was served on Leroy Fleming and the attorneys of record by electronic means or U.S. Mail on September 22, 2005.

s/J Hernandez
Case Manager to
Magistrate Judge Morgan